

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 279 of 2017**

Santosh Kumar Khandelwal, S/o. Late Shri Manohar Lal, aged about 55 years, R/o. 307 Samta Colony, Raipur, Tahsil and District Raipur (Chhattisgarh).

---Petitioner
Plaintiff

Versus

1. Smt. Veena Khandelwal, W/o. Late Shri Nilesh, aged about 46 years.
2. Rajat Khandelwal, S/o. Late Shri Nilesh, aged about 22 years.
3. Aman Khandelwal, S/o. Late Shri Nilesh, aged about 19 years. All Residence of Audhuogic Ward, Dhamtari, Tahsil and District Dhamtari (Chhattisgarh).
4. State of Chhattisgarh, through Collector, Dhamtari, Collector Office Dhamtari, District Dhamtari (Chhattisgarh).

---Respondents
Defendants

For Petitioner : Mr. Ajay Kumrani, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board**04.04.2017**

1. By the impugned order dated 03.02.2017, the application filed by Shri Dulichand Khandelwal for his impleadment under Order 1 Rule 10 of CPC has been allowed by the trial Court holding that proposed applicant is a necessary party.
2. Feeling aggrieved against that order, the instant writ petition has been preferred by the petitioner/plaintiff.

3. Mr. Ajay Kumrani learned counsel appearing for the petitioner/plaintiff would submit that the proposed applicant Shri Dulichand Khandelwal is neither necessary nor proper party and therefore the trial Court has committed a jurisdictional error by granting that application an impleading the proposed applicant as a party defendant in the suit.

4. I have heard learned counsel appearing for the petitioner and considered his rival submission with utmost circumspection.

5. The trial Court has clearly recorded a finding that suit property belongs to late Shri Nilesh Khandelwal and further observed taking into consideration the relationship between the parties that the proposed applicant is necessary party and that would enable the Court to decide the dispute effectively in his presence.

6. The question of addition of parties is a judicial discretion and not one of the initial jurisdiction of the Court. The Supreme Court in case of **Razia Begum v. Sahebzadi Anwar Begum and others**¹ while considering the question of addition of the party laid down the following proposition:-

“13. As a result of these considerations, we have arrived at the following conclusions:

(1) That the question of addition of parties under R. 10 of O. 1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the court, but of judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; but in

¹ AIR 1958 SC 886

some cases, it may raise controversies as to the power of the court, in contradistinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in S. 115 of the Code;

14. Applying the propositions enunciated above to the facts of the instant case, we have come to the conclusion that the courts below did not exceed their power in directing the addition of the respondents 1 and 2 as parties-defendants in the action. Nor can it be said that the exercise of the discretion was not sound. Furthermore, this case comes before us by special leave, and we do not consider that it is a fit case where we should interfere with the exercise of discretion by the courts below. The appeal is, accordingly, dismissed. As regards the question of costs, we direct that it will abide the ultimate result of the litigation, and will be disposed of by the trial court.”

7. Applying the principle of law laid down in the aforesaid judgment **Razia Begum**(supra), to the facts of the present case the trial court has exercised the discretion in directing addition of the parties taking at account nature of the property left by Shri Nilesh Khandelwal and the relationship of the present applicant with the plaintiff. In the considered opinion of this Court, the trial court is absolutely justified in directing addition of proposed applicant as a party defendant in the suit, I do not find any ground to interfere with the exercise of discretion by the trial Court. Consequently, the writ petition deserves to be and is accordingly dismissed.

Sd/-

Sanjay K. Agrawal
Judge

L/-